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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services	CC Docket No. 92-115

TO: The Commission

COMMENTS OF NEW PAR

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Pursuant to Section 1.415(a) of the Commission's rules, 47 C.F.R. § 1.415(a), New Par submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") released June 12, 1992 in the above-captioned proceeding.[1]

INTRODUCTION AND SUMMARY

New Par is a partnership controlled equally by Cellular Communications, Inc. ("CCI") and PacTel Corporation ("PacTel"), a wholly owned subsidiary of Pacific Telesis Group. New Par owns or controls the nonwireline cellular licensees in 20 markets in Ohio and Michigan, including the licensees in six of the country's top 50 markets. As such, New Par and the licensees it controls

[1] 7 F.C.C. Rcd. 3658 (1992).

will be directly affected by the rules adopted by the Commission in connection with the revision of Part 22.

New Par commends the Commission's effort to update its rules regarding public mobile services, particularly given the extent to which the mobile services industry has developed since the last Part 22 update and how much the cellular industry has grown -- and changed -- since the original cellular rules were adopted a decade ago. New Par largely concurs with the Commission's proposals, although in some instances New Par suggests that alternative solutions would better serve the interests of the public, the industry, and the Commission.

There are two proposals in particular that New Par supports and advocates adoption of by the Commission. First, the Commission should eliminate the current requirement that cellular licensees file Forms 489 to provide notice of the implementation of minor system modifications. Elimination of this requirement will not interfere with the Commission's administration of its duties. In addition, those parties that may be potentially affected by the minor modifications would have already obtained the relevant information regarding the changes through prior frequency coordination.

Second, the Commission should adopt proposals to treat as "minor" those cellular system modifications producing contour or CGSA extensions beyond the market boundary that are consented to by the licensee on the same frequency block of the market into which the proposed extension lies. This should be the case whether or not the consenting carrier retains the right to serve the extension area in the future as part of its CGSA. These proposals as well as other proposals on which New Par submits its comments are set forth below. (The cited rule sections represent the proposed new sections designation.)

Section 22.105(d)(1),(g): Subsection (d) would apply the current microfiche requirement to all applications submitted on standard forms as well as to those filings not on standard forms that comprise more than three pages. Subsection (g) would permit applicants to submit copies of their filings on MS-DOS compatible magnetic disks in lieu of microfiche.

New Par supports the proposal to permit the filing of copies in disk format. Indeed, were the Commission to eliminate entirely the microfiche requirement and require instead that applicants file magnetic disks in instances where microfiche would be required, the

Commission would accomplish several objectives. First, it would continue to maximize file storage space. Second, the Commission and the public would benefit from the increased legibility of computer-entered data,[2] speedier access to data made possible by computer technology, and a uniform storage medium (rather than both microfiche and disks). Third, licensees and applicants would incur lower costs in producing magnetic disks as compared to microfiche filings.

New Par recognizes that some licensees may not currently have the necessary computer hardware or software at their disposal to comply with a disk filing requirement. Nevertheless, data processing services are commercially available and would likely become even more widespread if such rules were adopted, as has been the case with microfiche services since the Mobile Services Division adopted its microfiche rules several years ago.

Accordingly, the Commission should adopt a sunset provision for microfiche filings, based upon its own computer capabilities and that of the industry in general. New Par would suggest a two-year period, after

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[2] Reproductions made from microfiched station files are often difficult to read.

which all copies currently required to be filed on microfiche would be filed on magnetic disks. Further, to facilitate the realization of the aforementioned objectives -- especially the collection and maintenance of data on one uniform medium -- the Commission should create a master MS-DOS readable disk that would include graphics of standard applications and notifications that applicants can copy and print out for filing purposes.

Section 22.105(e): This section proposes that the original versions of pleadings, among other filings, must be submitted at the same time that microfiche copies must be filed.

Although New Par supports this proposal, the Commission should clarify its related rule, which is currently codified in Section 1.45, that permits parties filing Part 22 Oppositions and Replies to submit microfiche copies of such pleadings within 15 days after the original paper version is filed with the Commission. In particular, this rule should also apply to the filing of initial petitions. This would promote the ability of parties and their counsel to prepare pleadings diligently up until the time of filing, would not frustrate the Commission's purposes of saving storage space, and would eliminate the need for parties to request a waiver to

submit such microfiche copies late, which is often the case.

Section 22.123(e)(2)(i): This section proposes that cellular filings will be considered major modifications whenever a licensee seeks to create a new cellular geographic service area ("CGSA") or to expand its existing CGSA beyond its geographic market boundary.

This proposed rule should be subject to the exception in the current cellular rules providing that such system modifications are treated as minor if the CGSA expansion is into a market where the five-year fill-in period of the licensee on the same frequency block has not expired, and that licensee consents in writing to the extension.[3] This would provide for greater consistency, and hence clarity, among the rules. See infra pp. 19-20.

Section 22.142: This section would enable licensees to notify the Commission on Form 489 that they have commenced service to the public within 15 days after such service commences.

A 15-day period is reasonably sufficient for the filing of Form 489 notifications. In particular,

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[3] See 47 C.F.R. § 22.903(d)(2). See also 47 C.F.R. §§ 22.9(d)(7)(iii), 22.913(d).

this would enable licensees to direct their resources toward constructing facilities and enable them to prepare Form 489 and Schedule B data after the final operating parameters are determined. This would also hasten service to the public by not delaying service until the necessary forms can be prepared, signed by the appropriate individual, and filed.

At least with respect to cellular, however, where licenses routinely modify their systems, the proposed rule does not address precisely whether the Form 489 notification requirement would apply only when a permittee commences providing initial service in its market, or whether it would also apply where a licensee modifies or adds cells to its system. For the reasons set forth below, see infra pp. 8-10, the Commission should clarify that, for cellular licensees, the requirement to file a Form 489 applies only when commencing initial service on the system.

Section 22.150: This section specifies the frequency coordination measures that Part 22 spectrum users would have to follow prior to commencing operations on the relevant channels. These measures should be adopted as proposed because they will enable licensees

and applicants to reduce the likelihood of frequency interference.

Section 22.163: The NPRM proposes that licensees will not be required to obtain "prior Commission approval" before implementing minor modifications at existing facilities. NPRM at ¶ 17.

The proposed language of the rule, however, would provide the same minor modification procedures for cellular licensees that exist today and stops far short of relieving licensees of the requirement to provide even prior notification, as proposed in the text of the NPRM. Forms 489 currently must be filed with the Commission no later than the same day that minor modifications to existing facilities are effected. The Commission should specifically adopt its proposal, at least with respect to cellular carriers, that no Commission notification whatsoever is necessary to implement minor or previously authorized major modifications.[4]

Adoption of this proposal would significantly ease unnecessary burdens and alleviate unnecessary costs

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[4] In other words, once a Form 401 major modification is granted, the cellular licensee should not be required to subsequently notify the Commission of construction within the terms of the authorization, except for initial system construction. See supra p. 7.

currently incurred by cellular carriers. For multiple-market system operators such as New Par and its individual licensees, minor modifications are made regularly at significant expense. These include power changes, antenna changes and downtilts, and sectorizations. Elimination of Forms 489 for these changes would reduce administrative costs without sacrificing any public interest benefits.[5]

Since affected carriers are given advance notice of these types of changes pursuant to prior frequency coordination notices, such carriers will not need to resort to the Commission's files for engineering or other information associated with the modification. This would also greatly reduce the Commission's regulatory costs associated with maintaining these files. Moreover, since licensees are required to comply with other rules (e.g. environmental, antenna structure lighting and marking,[6]

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[5] If the Commission should decide not to eliminate virtually all Form 489 filings New Par requests in the alternative that the Commission require licensees to provide a report detailing its minor modifications activity once every six or twelve months.

[6] The Commission should adopt procedures for applicants to obtain antenna structure markings and lightings from the Antenna Survey Branch similar to those adopted for pre-grant construction of major modifications for Part 22 facilities. See, e.g., Amendment of Part 22 of the Commission's Rules (Report and Order), 4 F.C.C. Rcd. 5960, 5961 (1989)

AM station proofs of performance), safety and other considerations will not be jeopardized. Finally, the Commission will still have access to relevant information because licensees will be required to maintain accurate records and respond promptly to Commission inquiries.[7]

Additionally, because these policies apply equally to all licensees, the rule should also exempt cellular carriers from filing Forms 489 for minor modifications to facilities located between Line A or Line C and the United States-Canada border. New Par currently operates cellular systems within these boundaries and has found that modifications to its cellular systems there pose no additional problems, notwithstanding their proximity to Canada. Indeed, New Par regularly coordinates its system changes in these areas with the Canadian licensee on the same frequency block. Further, to the extent that frequency coordination procedures do arise, the Commission can solicit data from New Par or other similarly situated licensees,[8] a procedure which it has already commenced.

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[7] See NPRM at ¶ 17; proposed section 22.315.

[8] See Reporting of Station Frequency and Technical Parameters for Registration by the Commission International Frequency Registration Board, CC Docket No. 92-160, Notice of Proposed Rulemaking (rel. July 30, 1992).

Section 22.165(e): This section proposes to permit cellular licensees to construct and operate additional transmitters without obtaining prior Commission approval, as long as the service area boundaries of the additional transmitters (i) do not extend beyond the market boundary during the licensee's five-year fill-in period, or (ii) extend beyond the licensee's CGSA after the five-year fill-in period has expired.

New Par requests that the Commission substitute the words "32 dBu contours" for the term "CGSA," which is the last word in the proposed section. This would make the rule consistent with current Commission policy that enables a licensee to add transmitters (or modify existing transmitters) that produce contours extending beyond its CGSA but within its previously authorized de minimis or consented-to contour extensions.[9]

Section 22.303: This proposed rule to require that the station call sign must be marked on all fixed transmitters should be modified.

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[9] See Northeast Pennsylvania Cellular Telephone Company, 4 F.C.C. Rcd. 2064, 2065 (Mob. Serv. Div. 1989) (Form 401 not required where licensee proposes an extension that will be encompassed within a previously authorized service area).

Multiple cellular system operators, such as New Par, continuously move transmitters from one cellular market and reinstall them at cell sites located in other markets when the transmitters are sent out for repair or the system is retuned or otherwise modified. The proposed rule, however, would substantially hinder this process since each market has a separate call sign and constant re-labelling of relocated transmitters would be required. Instead, the Commission should require that licensees individually label the "bays" or "racks" that house the individual transmitters at each cell site. These racks are not generally relocated. Rather, individual transmitters are taken from or placed into them when repairs are necessary or retuning is done. Thus, this proposed rule modification would equally facilitate the association of each transmitter with its corresponding cellular (or other) system, yet would significantly reduce the burden on licensees without undermining the goals of the Commission's proposed rule.

Section 22.371: This section would codify the current Commission policy which requires a licensee proposing to construct or modify facilities within certain distances of AM station towers to notify the AM station licensee and prepare certain measurements of the AM an-

tenna pattern before and after construction to determine what, if any, impact its construction had.

The proposed language suggests that a Part 22 licensee is obligated to minimize or eliminate the re-radiation from its facilities and to ensure that the affected AM station facilities are operating in accordance with the terms of the AM station license after construction of the Part 22 facilities. Some AM stations, however, may be operating at a variance from their authorization even prior to the construction of the Part 22 facilities. Accordingly, the proposed rule should be modified so that Part 22 licensees are responsible only only for the installation and continued maintenance of detuning apparatus necessary to prevent distortion of the AM station's antenna pattern directly attributable to the Part 22 licensee's facilities.

Depending upon the type of AM antenna pattern in question, the proposed rule would require Part 22 licensees either to perform a partial proof of performance or to take field strength measurements both before and after it constructs or modifies its facilities. A partial proof of performance, as defined by the rules, is not the most direct and efficient method to determine

whether an AM station's antenna pattern has been affected by the Part 22 construction.

The term "partial proof of performance" or "partial" is a term of art with a specific definition found in Section 73.154 of the Commission's rules. The definition of a partial proof states that the points to be measured should be selected from those measured in the AM station's most recent complete proof. Thereafter, the current measurements are analyzed with respect to the original measurements. For many stations, the original proofs were taken many years ago. In the intervening period, there may have been considerable growth and new construction. It would not be unusual to find little similarity between the area around an AM transmitter site today and that area as it was when the original proof was taken. Many of the original points may not be accessible, and the original descriptions, even if they are available, may no longer be germane.

For a before/after analysis, it is only important that the before and after measurements be taken at the same locations along the pertinent radials. Whether or not these are the identical points as taken in the last complete proof is largely irrelevant. Thus, whether an AM station's directional pattern has been adversely

affected by the Part 22 construction can be determined by taking and comparing before and after measurements along each of the pertinent radials.[10]

Section 22.907: This section would obligate cellular licensees to coordinate with appropriate parties

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[10] Measurements should be taken using a properly calibrated field strength meter to record field strength levels along each of the radials measured in the AM station's original proof. (For nondirectional AM towers, New Par suggests that measurements should be taken at a minimum of eight radials equally disposed about the AM transmitter site.) A minimum of 10 to 15 measurements should be taken on each radial, beginning at a distance not less than 10 times the maximum spacing of the AM array. (For nondirectional AM towers, measurements should be taken on each radial beginning at a distance not less than 5 times the height of the AM tower.) Measurements should be recorded at intervals of approximately 0.2 km up to 3.0 km from the antenna, at intervals of approximately 1.0 km from 3.0 km to 10.0 km, and at intervals of approximately 3.0 km thereafter. Measurement points should be clear and unobstructed.

The "before" measurements should be taken prior to the beginning of construction of the Part 22 tower while the "after" measurements should be taken (at the same points used in the "before" measurements) following the tower construction and the installation of all appurtenances thereto. The measurement data should be tabulated on a per radial basis. For each point, the "before" and "after" field strength readings are then tabulated, as is the ratio of the "after" to the "before" reading. For each radial, the average (arithmetic or geometric mean) of the after/before ratios would then be calculated and tabulated. As an alternative, if it is suspected that the before and after comparison may be affected by seasonal changes, a comparison can be made between the point by point directional to nondirectional ratios taken before the Part 22 construction to those taken following the construction.

channel usage at their transmitter locations that are within 75 miles of other authorized or proposed transmitter locations.

The Commission should clarify this rule in two respects. First, it should specify that licensees must conduct prior frequency coordination with other licensees operating on the same frequency block whose exclusive service areas are within 75 miles from the proposed facilities. It is not clear in the current rules or the proposed Section 22.907 whether coordination is necessary only with those licensees who have facilities, as opposed to service areas, within 75 miles of the proposed cell site. Since new facilities may affect another licensee's existing operations or system expansion even though the latter has no existing facilities within 75 miles, the proposed clarification will better serve the goals of full frequency coordination and efficient spectrum use.

In addition, the Commission should require licensees to notify their in-market competitors (i.e., the licensee in their market on the other frequency block) of new or modified facilities. Since there is no guard-band that separates the two assigned frequency blocks, interference at times occurs where two competitors are operating facilities in close proximity on adja-

cent channels. Thus, the Commission should expand the definition of "appropriate parties" to include carriers licensed within the same market that operate on opposing block frequency.[11]

Section 22.909: This section proposes to eliminate the prior approval requirement for locating a control point beyond one's market boundaries.

New Par fully supports this rule change. The current rule serves no useful purpose yet restricts licensee flexibility, particularly multiple-market system operators who, like New Par, tend to operate systems in multiple markets off one or more MTSOs in a single market.

Section 22.911: This section incorporates the unserved area and CGSA rules, as well as the algebraic formula used to determine reliable service area boundaries, that the Commission adopted in the Unserved Areas Second Report and Order.[12]

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[11] The notification requirement should include the same data provided to other affected licensees under this section. For competitive reasons, however, the rule should not require licensees to notify their competitors of new or modified facilities prior to their construction.

[12] Second Report and Order in CC Docket No. 90-6, 7 F.C.C. Rcd. 2449, 2453 (1992).

Section 22.911(a)(4), regarding the value for "power" in determining a licensee's 32 dBu contour, needs modification. That section provides that the value used for power in the 32 dBu contour equation must not be less than 27 dB below the maximum ERP in any direction. For many transmitters, however, a cellular operator can use a value that is less than 27 dB below the maximum ERP in any direction and still produce an accurate service area boundary calculation. By imposing an inaccurate minimum value for power, 32 dBu contours may be exaggerated so as to exceed their actual coverage area. Thus, modifications that are in fact "minor" would unnecessarily be treated as major.

In addition, the proposed rule omits language from the Second Report and Order that would require carriers to assume a power value of at least 0.1 watt.[13] New Par supports this omission. Such a minimum level, as with the "27 dB" level, is inappropriate in many cases. For instance, licensees seeking to implement microcells or cell-enhancers may not exceed these minimum levels.

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[13] See Second Report and Order in CC Docket No. 90-6, 7 F.C.C. Rcd. 2449, 2469 (1992) ("value used for p[o-wer] [m]ust not be less than 0.1 watt or 27 dB below the maximum ERP in any direction, whichever is more.")

Such low-power facilities are becoming increasingly common in larger, urban markets. Accordingly, the Commission should eliminate both minimum value assumptions for "power" in the proposed rules.

Section 22.912(a): This section restates the rule adopted in the Unserved Areas Second Report and Order regarding "contract extensions" between licensees in adjacent markets during their five-year fill-in periods. New Par supports the proposed rule, yet submits that it is unnecessarily vague and in need of clarification.

First, the Commission should clarify that system modifications involving 32 dBu contour extensions into an adjacent market to which the adjacent licensee consents are minor changes, regardless of whether the adjacent licensee contracts away its right to serve the extension area in the future. The Commission should also modify the rule to include consented-to extensions into a market where the fill-in period has expired, provided that no unserved areas are encompassed by the extension. Once the adjacent licensee on the same frequency block consents to the extension, no other third party interests

are sufficient to deny the proposed extension.[14] Indeed, the Commission has routinely granted such consented-to extensions regardless of whether they would be deemed de minimis.[15] Treating such extensions as "major" modifications would impose unnecessary regulation upon the licensees in question. Thus, the Commission should clarify that all extensions which are consented to by the licensees in the extension markets are minor modifications, provided that such extension cover no unserved areas within a market in which the five-year fill-in period has expired.[16]

Second, the Commission should clarify that it will retain its policy of treating as minor modifications those changes which produce 32 dBu contour extensions outside a licensee's CGSA, but within a previously authorized extension, even where no consent letter is provided

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[14] See, e.g., Victoria Cellular Telephone Company, DA 92-1258, released 9/23/92.

[15] See, e.g., Bell Atlantic Mobile Systems of Philadelphia, 2 F.C.C. Rcd. 7531 (Mob. Serv. Div. 1987); Orange County-Poughkeepsie Limited Partnership, 3 F.C.C. Rcd. 1191 (Mob. Serv. Div. 1988).

[16] Such extensions raise no more interference concerns than do changes contained entirely within one's own CGSA and should be accorded the same regulatory treatment.

by the adjacent licensee. Indeed, under prior Commission policy a licensee could notify the Commission on Form 489 that it had constructed cellular facilities that produced 32 dBu contour extensions into an adjacent market if those extensions were contained entirely within the licensee's previously authorized extensions.[17] The fact that this policy applied to the Carey 39 dBu formula while current standards adhere to a 32 dBu formula is irrelevant. Indeed, the Commission already has specifically acknowledged that 32 dBu contour extensions are subject to the same de minimis factors as were 39 dBu contour extensions.[18]

Section 22.919: This section requires manufacturers of mobile units to set electronic serial numbers ("ESN") in such a manner so that they can not be altered, misappropriated, or manipulated.

New Par fully supports this rule and the Commission's underlying objective to curb cellular service fraud and theft. To serve this end, however, the Commission should also proscribe activity that does not physi-

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[17] See supra n.9.

[18] See Second Report and Order in CC Docket No. 90-6, at 7 F.C.C. Rcd. at 2456 n.35.

cally alter the ESN chip yet affects the radiated ESN by "translating" the ESN signal that the mobile unit transmits. Such alterations are becoming an increasing problem for cellular licensees in combatting fraud and therefore should also be prohibited.

Section 22.941: This section enables licensees to notify the Commission of changes to its SID, rather than seeking Commission approval for such changes. New Par supports this proposal, provided that the Commission clarify that no licensee may select the existing SID of another licensee without the latter's express authorization. Without this limitation, licensees and subscribers in certain circumstances might not know whether a particular subscriber was roaming or not. Hence, this limitation will alleviate customer and licensee confusion.

Respectfully submitted,

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